

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

HILDA L. SOLIS, Secretary of Labor,)	
United States Department of Labor,)	
)	CIVIL ACTION NO.
Plaintiff,)	5:10-CV-00004-FL
)	
v.)	
)	
SUZANNE CLIFTON, an Individual;)	
CASTLETON GROUP, INC., a North)	
Carolina Corporation; CASTLETON GROUP)	
RETIREMENT SAVINGS PLAN;)	
CASTLETON GROUP, INC. GROUP)	
HEALTH PLAN,)	
)	
Defendants.)	

CONSENT JUDGMENT AND ORDER

Plaintiff Hilda L. Solis, Secretary of Labor, United States Department of Labor, pursuant to her authority under §§ 502(a)(2) and 502(a)(5), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(5), of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., ("ERISA") has filed a Complaint against Defendants Suzanne Clifton, Castleton Group, Inc., and joined as party-defendants pursuant to Rule 19(a) the Castleton Group Retirement Savings Plan (the "401(k) Plan") and Castleton Group, Inc. Group Health Plan¹. Defendants Clifton, Castleton Group, Inc., the 401(k) Plan, and the Group Health Plan (hereinafter "Defendants") and the Secretary have agreed to resolve all matters in controversy in this action and do now consent to entry of a Judgment and Order by this Court

¹ Plaintiff also initially named James O. McLamb, Jr., as a defendant. Plaintiff's subsequent motion for dismissal of Mr. McLamb was granted by this Court on July 16, 2010. (Docket Entry #28).

as set forth below.

A. Defendants admit for the purposes of this compromise and settlement to the jurisdiction of the Court over them and over the subject matter of this action, with regard to claims not exclusively within the jurisdiction of the United States Bankruptcy Court, and admit that this Court has the authority to enforce this Order and that this Court is the most appropriate venue for any enforcement action which may be required as a result of this Order, with the exception of the assertion, prosecution, establishment or collection of any monetary claims against Defendants that are within the exclusive jurisdiction of the United States Bankruptcy Court for the Eastern District of North Carolina.

B. The Secretary and Defendants expressly waive Findings of Fact and Conclusions of Law, except as otherwise set forth and addressed herein, and consent to the entry of this Order as a full and complete resolution of all claims and issues which were, or might have been, alleged in this action without trial or adjudication of any issue of fact or law raised in the Complaint, and without entry of a judgment as to liability.

C. The parties recognize that, pursuant to a separate settlement agreement (“separate Settlement Agreement”) resulting from efforts by the 401(k) Plan’s Successor Trustee to recover losses to the 401(k) Plan potentially covered by insurance sources, payments are to be made to the 401(k) Plan by a fiduciary liability insurance carrier and a fidelity bond carrier (collectively “Carriers”). As set forth in the separate Settlement Agreement, Castleton Group, Inc., Castleton Affiliates, LLC, Castleton Associates, LLC, Castleton Group, Inc. Retirement Savings Plan, Suzanne S. Clifton, and American International Specialty Lines Insurance Company (hereinafter “parties to the separate

Settlement Agreement”) agree to present Motions to Compromise for approval by the United States Bankruptcy Court in the bankruptcy proceedings specified in Section I of the separate Settlement Agreement (“Conditions Precedent to Settlement Agreement Becoming Effective”). The Defendants in this matter who are parties to the separate Settlement Agreement agree to execute the release documents identified in Section II (“Payment of Insurance Proceeds”) and Section III (“Release as to AISLIC Fiduciary Liability Insurance Policy and Other Various Releases”) of the separate Settlement Agreement. The Parties recognize and agree that the amounts received by the 401(k) Plan from insurance coverage and any payments from Defendants are not being paid as the result of a settlement with the Secretary and are not being paid as the result of a court order or judgment in a judicial proceeding instituted by the Secretary.

D. This Order represents a complete settlement of all the Secretary's claims asserted in this action against Defendants,

E. This Order is not binding upon any government agency other than the U.S. Department of Labor and only resolves claims arising out of this action as between the Secretary and Defendants.

F. Defendants expressly waive any and all claims of whatsoever nature that they have or may have against the Secretary, or any of her officers, agents, employees, or representatives, arising out of or in connection with the filing, prosecution, and maintenance of this civil action or any other proceeding and investigation incident thereto.

Accordingly, it is **ORDERED ADJUDGED AND DECREED** that:

1. The Court has jurisdiction over the parties to this Order for purposes of

this mediated settlement, and is empowered to provide the relief herein, with the exception of the assertion, prosecution, establishment or collection of any monetary claim against Defendants Clifton and the Castleton Group that are within the exclusive jurisdiction of the United States Bankruptcy Court for the Eastern District of North Carolina.

2. The Secretary releases all claims asserted in this action against Defendants.

3. Castleton Group, Inc., shall recognize a priority claim of \$66,705.00 for health insurance premiums due to plan participants, which shall be recognized in: *In re Castleton Group, Inc.*, Case No. 07-02896-5-RDD, U.S. Bankruptcy Court Eastern District of North Carolina (the “Castleton Case”). Chapter 7 Trustee Richard Sparkman, through special counsel Hugh Davis, shall file an amended Proof of Claim in the amount of \$66,705.00, designating the claim as having priority pursuant to 11 U.S.C. § 507(a)(5) (the “Health Plan Claim”). The recognition of the priority claim as described herein represents full satisfaction of the Secretary’s claim pertaining to losses to the Group Health Plan alleged in the Complaint. Defendants Clifton and the 401(k) Plan shall not object to the Secretary’s priority claim of \$66,705.00 described herein. Distributions to creditors and claimants resulting from the Health Plan Claim shall be made in accord with the future orders of the US Bankruptcy Court in the Castleton Case.

4. The Secretary of Labor waives all claims to Ms. Clifton’s 401(k) balance.

5. Defendant Clifton shall be permanently enjoined from acting as a fiduciary, trustee, agent, or representative in any capacity to any employee benefit plan, as

defined by ERISA.

6. Defendant Clifton shall withdraw her appeal from the bankruptcy court's denial of her motion for sanctions against the Department of Labor in the bankruptcy court, *In re Clifton*, Case No. 09-02379-RDD, U.S. Bankruptcy Court Eastern District of North Carolina.

7. This action is hereby dismissed with prejudice.

8. This Consent Judgment does not affect or bind any governmental agency other than the United States Department of Labor.

9. Each party shall bear its or her own costs and expenses, including attorneys' fees, arising in connection with any stage of the above-referenced proceeding including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

This 19th day of January, 2010.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. To the right of the signature is a horizontal line.

Chief United States District Judge
Louise W. Flanagan

SUBMITTED THIS 7TH DAY OF JANUARY, 2011, AND CONSENTED TO BY:

FOR PLAINTIFF:

UNITED STATES DEPARTMENT OF LABOR

M. PATRICIA SMITH
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

ROBERT M. LEWIS, JR.
Counsel

By: /s/Angela F. Donaldson
ANGELA F. DONALDSON
Senior Trial Attorney

Office of the Solicitor
U. S. Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, GA 30303
Telephone: (404) 302-5435
Facsimile: (404) 302-5438
Email: donaldson.angela@dol.gov

FOR DEFENDANT SUZANNE CLIFTON:

By: /s/Gregory B. Crampton
GREGORY B. CRAMPTON, ESQ.

NICHOLLS & CRAMPTON, P.A.
Post Office Box 18237
Raleigh, NC 27619
Telephone: (919) 781-1311
Facsimile: (919) 782 – 0465
Email: GCrampton@nichollscrampton.com

**FOR DEFENDANT CASTLETON GROUP, INC., AND CASTLETON GROUP, INC.
GROUP HEALTH PLAN:**

By: /s/ David L. Woodard
DAVID L. WOODARD, ESQ.
HUGH DAVIS, ESQ.

POYNER SPRUILL LLP
P.O. Box 1801
Raleigh, NC 27602-1801
Telephone: (919) 783 - 6400
Facsimile: (919) 783 - 1075
Email: dwoodard@poynerspruill.com

FOR DEFENDANT CASTLETON GROUP RETIREMENT SAVINGS PLAN:

By: /s/ Holmes P. Harden
HOLMES P. HARDEN, ESQ.

WILLIAMS MULLEN
301 Fayetteville Street
Suite 1700
Raleigh, NC 27601
Telephone: (919) 981 - 4011
Facsimile: (919) 981 - 4300
Email: hharden@williamsmullen.com